

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7023 OF 2023

Suraj Properties Ltd. & Anr. ... Petitioners
V/s.
Maria Suraj Cooperative Housing
Society Ltd & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO.370 OF 2026
IN
WRIT PETITION NO. 7023 OF 2023**

Sadafuli Finvest Private Limited ... Applicant
In the matter between
Suraj Properties Ltd. & Anr. ... Petitioners
V/s.
Maria Suraj Cooperative Housing
Society Ltd & Anr. ... Respondents

Mr. Vishal Kanade with Mr. Raj Adhia i/b Economic
Laws Practice, for the Petitioner.

Ms. Mamta Shrivastva, AGP, for the State – Respondent
No.2.

Mr. Mayur Khandeparkar, with Mr. Aditya Miskita, Mr.
Umair Merchant, Ms. Aayushi Gohil, Ms. Rima
Ajmerwalla, Ms. Kanak Purohit i/b M/s. M. T. Miskita
& Co., for Respondent No.1.

Mr. Prakash Shah, Sr. Advocate a/w Mr. Durgaprasad
Poojari i/b PDS Legal, for Applicant in IA/370/20226.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2026

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1. The present Petition is directed against the order dated 17 February 2023 passed by Respondent No. 2, whereby the application preferred by Respondent No. 1 seeking grant of unilateral deemed conveyance came to be allowed. The challenge, in substance, is founded on the contention that the said order suffers from errors apparent on the face of the record and reflects improper exercise of jurisdiction.

2. The facts giving rise to the present Petition, briefly stated, disclose that one Mr. Roque Francis Fernandes, Mr. Vincent Danial Concessio, and Ms. Emma Mary Isabella Concessio, acting as Trustees of Manuel Gonsalves Trust, were seized and possessed of the subject property and held valid title thereto. It is an admitted position that by a Deed of Conveyance dated 29 October 1985, the said Trustees transferred the property in favour of Petitioner No. 2, who acted in his capacity as Director and nominee of Petitioner No. 1. This foundational transaction assumes significance, as the entire claim of the Petitioners is based upon the legality and subsistence of the said conveyance. Pursuant to the said conveyance, and after securing requisite permissions from the Municipal Corporation of Greater Mumbai, Petitioner No. 1 undertook construction of a building known as “Maria Salisbury Park” on the subject property. The development activity carried out by the Petitioners is relied upon to demonstrate their possession, control, and investment in the property, thereby asserting their continuing interest therein.

3. It is further borne out from the record that on 17 October 1987, Petitioner No. 1 executed agreements for sale with various purchasers in respect of flats proposed to be constructed in the said building. The uniformity of terms and conditions across such agreements indicates a standardized transaction in compliance with statutory requirements. Subsequently, on 17 June 1992, the Municipal Corporation issued an Occupation Certificate for the building, and possession of the flats was handed over to the respective purchasers from time to time.

4. In or about August 2022, Respondent No. 1 approached Respondent No. 2 by filing an application seeking deemed conveyance of the property. The Petitioners, in response, filed an application dated 15 October 2022 seeking production of documents under the Maharashtra Ownership Flats Rules, with a view to substantiate their objections. However, by the impugned order dated 17 February 2023, Respondent No. 2 proceeded to allow the application of Respondent No. 1 and granted deemed conveyance in its favour, including with respect to a portion of the property alleged to be under lease. The Petitioners, being aggrieved by such adjudication, have invoked the writ jurisdiction of this Court.

5. Mr. Kanade, learned Counsel appearing for the Petitioners, submitted that the Competent Authority has exercised its jurisdiction in an illegal and excessive manner, without duly considering the material aspects of the case. It was contended that a Civil Suit bearing No. 6749 of 2005 is pending at the instance of the original owner–Trust, wherein the very Deed of Conveyance

dated 29 October 1985 is under challenge on the ground that it is illegal, invalid, and void ab initio, inter alia for want of prior permission of the Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act. According to the Petitioners, the pendency of such proceedings strikes at the root of the title claimed by them and ought to have been given due weight.

6. It was further submitted that once the Civil Court is seized of the question relating to the validity of the conveyance, principles of judicial discipline and propriety require that the Competent Authority, while exercising summary jurisdiction, ought to refrain from rendering findings which may overlap or conflict with the adjudication in the substantive civil proceedings. The submission proceeds on the basis that parallel determinations may result in inconsistency and prejudice to the parties.

7. Learned Counsel for the Petitioners additionally contended that the Competent Authority failed to properly appreciate the effect of a lease deed executed by the society in favour of one Mr. Naval J. Ardeshir. It was urged that such transaction has a direct bearing on the nature and extent of rights in the property. Reliance was placed on the judgment of this Court in *Kashish Park Reality Pvt. Ltd. v. State of Maharashtra*, (2021) 3 Mah LJ 778, particularly paragraph 23 thereof, to submit that the powers under Section 11 of MOFA are summary in nature and must be exercised with circumspection. It was argued that the impugned order travels beyond the limited scope of inquiry permissible under Section 11 and, therefore, warrants interference.

8. Per contra, learned Counsel for the Respondents submitted that the execution of agreements under Section 4 of MOFA, the existence of sanctioned plans, and the issuance of occupation certificate are not in dispute. It was contended that the promoter failed to execute the conveyance within the statutory period of four months from the date of registration of the society, thereby attracting the provisions of deemed conveyance. It was further urged that the mere pendency of a civil suit between the owner and the developer does not create a legal bar on the exercise of statutory powers by the Competent Authority.

9. Having considered the rival submissions and upon perusal of the material on record, including the agreements executed under Section 4 of MOFA and the sanctioned plans, this Court finds that the contentions raised by the Petitioners cannot be accepted. The legal position is well settled that the scope of inquiry under Section 11 of MOFA is limited and summary in nature. The Competent Authority is required to examine only whether there exists a valid agreement under Section 4, whether the society is entitled to conveyance, and whether there is failure on the part of the promoter to discharge its statutory obligation. Any inquiry beyond these aspects would fall outside its jurisdiction.

10. In the present case, there is no dispute regarding execution of agreements under Section 4 of MOFA. There is also no serious dispute regarding the extent of the property to be conveyed. Further, it stands admitted that the developer has failed to execute the conveyance within the prescribed statutory period. These undisputed facts satisfy the essential requirements for grant of

deemed conveyance.

11. The principal contention of the Petitioners rests on the pendency of the Civil Suit filed by the Trust challenging the validity of the conveyance on the ground of non-compliance with Section 36 of the Maharashtra Public Trusts Act. However, in the absence of any interim order restraining the grant of deemed conveyance, such pendency cannot operate as a legal embargo on the exercise of statutory powers under Section 11 of MOFA. Accepting such contention would defeat the very object of the statute, which is to ensure timely conveyance in favour of flat purchasers.

12. The subject matter of the said suit pertains to adjudication of title and validity of the conveyance in the context of statutory compliance under the Maharashtra Public Trusts Act. Such issues fall within the domain of the Civil Court and can be adjudicated independently. The same does not divest the Competent Authority of its jurisdiction to grant deemed conveyance, which is based on a distinct statutory scheme intended to protect the rights of flat purchasers.

13. In view of the aforesaid discussion, this Court finds that the impugned order passed by the Competent Authority does not suffer from any jurisdictional error, illegality, or perversity warranting interference under Article 226 of the Constitution of India. The order reflects due consideration of relevant factors within the scope of its statutory powers.

14. The Writ Petition is accordingly dismissed, as no case for interference is made out.

15. In view of the dismissal of the Petition, the Interim Application does not survive and is disposed of accordingly. It is, however, clarified that if any independent rights of any intervenor are affected, it shall be open to such party to pursue appropriate remedies in accordance with law.

16. There shall be no order as to costs.

(AMIT BORKAR, J.)